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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,545	04/02/2004	William Jackson Devlin SR.	DCS-9166	2540

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EXAMINER	
HANDY, DWAYNE K	

ART UNIT	PAPER NUMBER
1797	

MAIL DATE	DELIVERY MODE
01/08/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/817,545	DEVLIN, WILLIAM JACKSON	
	Examiner	Art Unit	
	DWAYNE K. HANDY	1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 October 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10* is/are pending in the application.

4a) Of the above claim(s) *6-10* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1-10* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Devlin (7,101,715). This rejection was maintained in the previous Office Action (mailed 6/25/08). It remains in effect. Please see Response to Arguments below.

3. Claims 1, 2 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Vuong et al. (7,270,784). Vuong teaches an automated laboratory for high throughput biological assays. The laboratory is shown in Figures 1A and 1B and described in columns 12 and 13. It includes two reagent storage areas (carousels 130 and 135) with trays (column 12, lines 33-44) and two shuttles (transports 105 and 110). Vuong teaches the use of duplicate reagents for assays to increase throughput in column 13, lines 5-47.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Devlin (7,101,715). This rejection was maintained in the previous Office Action (mailed 6/25/08). It remains in effect. Please see Response to Arguments below.

Response to Arguments

6. Applicant has argued (pages 3-4) that Bell does not teach a second storage area for reagents but instead teaches a sample wheel that is not a reagent server. The Examiner agrees. The previous 102 rejection under Bell has been removed.

7. Applicant has also argued that Devlin does not disclose a single clinical analyzer having two reagent servers. The Examiner respectfully disagrees. Figure 5 shows the device of Devlin. As noted by Applicant in arguments, the device shown in Figure 5 is comprised of a pair of analyzers ***linked together*** by a sample rack shuttle. That is, all of the elements of Devlin are linked together to form an integral single device that is shown in Figure 5. Devlin refers to this device having integral parts as an "analytical analyzer system" that includes first and second analyzers, but it still may be considered a single device comprised of many elements (i.e. "a single analyzer"). In addition, each analyzer within the system includes a "reagent server" (as defined by Applicant) comprised of a storage area having a tray for holding reagent containers and a shuttle (transport mechanisms 72 and 74). The Examiner submits that this is what the claim as written requires: A single clinical analyzer (the system in Figure 5) that is adapted to perform a number of different assays (using analyzers 10 and 11) with reagents inventoried in at least two separate reagent servers within said single analyzer (again, the overall system shown in Figure 5).

8. The Examiner further notes that the term "single clinical analyzer" is a broad functional limitation (the device is defined by its function – analyzing) and that Applicant has not claimed any particular ***structural elements*** comprising the "single clinical analyzer" such that the system of Devlin would be excluded by this term.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DWAYNE K. HANDY whose telephone number is (571)272-1259. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dwayne K Handy/
Examiner, Art Unit 1797
January 4, 2009

/Jill Warden/
Supervisory Patent Examiner, Art Unit 1797